



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 18-536
May 22, 2018

DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN ASSETS OF CENTURYLINK, INC. BY FIRSTDIGITAL COMMUNICATIONS, LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 18-154

Comments Due: June 5, 2018

Reply Comments Due: June 12, 2018

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application¹ filed by CenturyLink, Inc. (CenturyLink) and FirstDigital Communications, Inc. (FirstDigital Communications), FirstDigital Communications Arizona, LLC (First Digital Communications Arizona), and FirstDigital Telecom Arizona, LLC (FirstDigital Telecom Arizona) (collectively, FirstDigital and, together with CenturyLink, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules, requesting approval for the transfer of certain assets (Metropolitan Statistical Area (MSA) Divestiture Assets) of CenturyLink located in the Tucson, Arizona MSA to FirstDigital.² Level 3 Communications (Level 3) formerly operated the Tucson MSA Divestiture Assets prior to CenturyLink's acquisition of Level 3, which was consummated on November 1, 2017. Applicants state that they are undertaking the proposed transaction in compliance with the requirements of the Final Judgment issued by the Department of Justice in connection with CenturyLink's acquisition of Level 3.³ The Final Judgment ordered CenturyLink to divest, among other things, the Tucson MSA Divestiture Assets within certain timeframes and as expeditiously as possible.⁴

¹ CenturyLink, Inc. and FirstDigital Communications, LLC, Joint Application for Consent to Assignment of Assets, WC Docket No. 18-154 (filed May 15, 2018) (Application). Applicants filed a supplement to their Application on May 17, 2018. See Letter from Yaron Dori, Counsel to CenturyLink, Inc., and Douglas C. Waddoups, Counsel to FirstDigital, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-154 (filed May 17, 2018) (Applicants' Supplement). Any action on this Application is without prejudice to any separately filed applications.

² See 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

³ Application at Exh. B (*U.S. v. CenturyLink, Inc. and Level 3 Communications, Inc.*, Civil Action No. 1:17-cv-02028-KBJ, Final Judgment (Mar. 6, 2018) (Final Judgment)).

⁴ Final Judgment at 7-8. On April 30, 2018, the Bureau granted separate domestic section 214 applications for the transfer of certain assets formerly owned by Level 3 in the Albuquerque, New Mexico MSA to Unite Private Networks, LLC and in the Boise City-Nampa, Idaho MSA to Syringa Networks, LLC. See *Notice of Domestic Section 214 Authorization Granted*, WC Docket Nos. 18-76, 18-79, Public Notice, DA 18-437 (WCB Apr. 30,

CenturyLink, a Louisiana corporation, provides telecommunications services and other services over a 450,000-route-mile U.S. fiber network. CenturyLink's operating subsidiaries provide telecommunications services in all 50 states and the District of Columbia, as well as Puerto Rico and the U.S. Virgin Islands. CenturyLink provides telecommunications services as an incumbent LEC in 37 states, including in the Tucson MSA.

FirstDigital, a Utah limited liability company, provides telecommunications services and other services in Utah, Idaho, and Arizona.⁵ The following U.S. citizens and entities ultimately hold a 10 percent or greater ownership interest in FirstDigital: Wesley McDougal (24.5 percent); Amanda McDougal (24.5 percent); The Kem C. Gardner Family Partnership, Ltd. (22.54 percent); and H. Roger Boyer Family Partnership, Ltd. (22.54 percent).⁶ Applicants state that neither FirstDigital nor any of its affiliates provide any telecommunications services in the Tucson MSA.

Pursuant to the terms of an Asset Purchase Agreement (APA), CenturyLink agreed to sell the Tucson MSA Divestiture Assets to FirstDigital, thus facilitating CenturyLink's compliance with the divestiture requirements of the Final Judgment.⁷ The Tucson MSA Divestiture Assets consist of all of the assets, tangible or intangible, used for the operations of the network previously operated by Level 3 that provide telecommunications service in the Tucson MSA.⁸ Under the terms of the APA, CenturyLink and FirstDigital also have agreed to enter into a Transition Services Agreement and a Wholesale Services Agreement to, respectively, facilitate the orderly transition of the Tucson MSA Divestiture Assets from CenturyLink to FirstDigital and to ensure that customers that choose to remain with CenturyLink in the Tucson MSA and whose service is provisioned using the Tucson MSA Divestiture Assets will continue to receive the same service without disruption following the asset transfer for a period of time mutually agreed to by the Applicants.⁹

Applicants state that the proposed transaction will serve the public interest. Applicants contend that the proposed transaction will enhance competition and benefit customers by enabling FirstDigital to immediately strengthen its position as a provider of fiber-based telecommunications services in the

2018).

⁵ Applicants' Supplement at 1.

⁶ Applicants state that Kem C. Gardner is the General Partner of The Kem C. Gardner Family Partnership, Ltd. and that H. Roger Boyer is the General Partner of the H. Roger Boyer Family Partnership, Ltd. Both are U.S. citizens. Applicants' Supplement at 1. *See* Application at 13-16 for a more detailed description of FirstDigital's ownership.

⁷ Application at 6-7.

⁸ Applicants state that the transaction excludes those assets that are used for provision of telecommunications services outside the MSA or between the MSA and other locations outside the MSA. Also excluded are customer contracts, cash, contracts that affect the former Level 3 operations both inside and outside the MSA, intellectual property, assets related to service to specified excluded customers, assets of CenturyLink (other than those of the former Level 3), and certain municipal franchise and license agreements. *See Id.* at 7, n.13, Exh. B (MSA Divestiture Assets).

⁹ *Id.*

Tucson MSA.¹⁰ Because of the public interest review associated with this proposed transaction, the Application is not subject to streamlined treatment.¹¹

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of CenturyLink, Inc. by FirstDigital Communications, LLC, WC Docket No. 18-154 (filed May 15, 2018).

GENERAL INFORMATION

The application identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

Interested parties may file comments and petitions **on or before June 5, 2018**, and reply comments or oppositions to petitions **on or before June 12, 2018**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Electronic Filers: Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 1-888-835-5322 (tty).

In addition, please provide one copy of each pleading to each of the following:

¹⁰ *Id.* at 7-8. Applicants state that on May 9, 2018, the Department of Justice Antitrust Division notified CenturyLink of its approval of FirstDigital as the Tucson MSA Divestiture buyer. *Id.* at 2.

¹¹ 47 CFR § 63.03(c)(1).

- 1) Jim Bird, Office of General Counsel, transactionteam@fcc.gov;
- 2) Dennis Johnson, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 3) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov.

The proceeding in this Notice shall be treated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules.¹² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the Applications in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.¹³ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Tracey Wilson at (202) 418-1394 or Dennis Johnson at (202) 418-0809.

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¹² 47 CFR § 1.1200 *et seq.*

¹³ *See* 47 CFR § 1.45(c).